

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

CASE NO.: 1:24-cv-00380

HAROLD DAVIS,

Plaintiff,

v.

HIRT'S LLC dba HIRT'S GARDENS,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiff HAROLD DAVIS by and through his undersigned counsel, brings this Complaint against Defendant HIRT'S LLC dba HIRT'S GARDENS for damages and injunctive relief, and in support thereof states as follows:

SUMMARY OF THE ACTION

1. Plaintiff HAROLD DAVIS ("Davis") brings this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Davis's original copyrighted Work of authorship.

2. Davis is a bestselling author of many books about digital photography and Photoshop, including most recently "Achieving Your Potential as A Photographer" from Focal Press, as well as "Monochromatic HDR Photography", "The Way of The Digital Photographer" and many others. He is a digital artist using his photographs as his source material. Davis uses his training and skills as a fine art painter to free him from the restraints of conventional photography and place him squarely in the broader traditions and experiences of art. Specifically, he starts with the creative controls inherent to cameras and photography, and by using

compositing, Photoshop, digital painting on layers and layer masks, and special effect filters to achieve the desired effect.

3. Defendant HIRT’S LLC dba HIRT’S GARDENS (“HG”) is a family-owned retail greenhouse that has been in operation since 1915. HG provides consumers with an array of goods and services, including seeds, seedlings, mature plants, pottery, and plant subscriptions.

4. At all times relevant herein, HG owned and operated the internet website located at the URL <https://hirts.com/> (the “Website”).

5. Davis alleges that HG copied his copyrighted Work from the internet in order to advertise, market and promote its business activities. HG committed the violations alleged in connection with HG’s business for purposes of advertising and promoting sales to the public in the course and scope of its plant business.

JURISDICTION AND VENUE

6. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

8. Defendant is subject to personal jurisdiction in Ohio.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, HG engaged in infringement in this district, HG resides in this district, and HG is subject to personal jurisdiction in this district.

DEFENDANT

10. HIRT’S LLC dba HIRT’S GARDENS is registered as an Ohio limited liability company, with its principal place of business located at 4943 Ridge Road, Granger Township,

Ohio 44281, and can be served through its Registered Agent, Alan Hirt, at 17980 Falling Leaves Road, Strongsville, Ohio 44136 or whenever he may be found.

THE COPYRIGHTED WORK AT ISSUE

11. In 2006, Davis created the photograph entitled “Coral Bells”, which is shown below and referred to herein as the “Work”:



12. Davis registered the Work with the Register of Copyrights on May 18, 2016, and was assigned the registration number VA 2-007-233. The Certificate of Registration is attached hereto as **Exhibit 1**.

13. Davis’s Work is protected by copyright but is not otherwise confidential, proprietary, or trade secrets.

14. At all relevant times Davis was the owner of the copyrighted Work.

INFRINGEMENT BY DEFENDANT

15. HG has never been licensed to use the Work at issue in this action for any purpose.
16. On a date after the Work at issue in this action was created, but prior to the filing of this action, HG copied the Work.
17. On or about December 31, 2022, Davis discovered the unauthorized use of his Work on HG's Website. The Work was used to advertise HG's plant business.
18. HG copied, reproduced, and displayed Davis's Work without Davis's permission.
19. After HG copied the Work, it made further copies and distributed the Work on the internet to promote the sale of goods and services as part of its regular business activities.
20. HG copied and distributed Davis's copyrighted Work in connection with Defendant's business for purposes of advertising and promoting Defendant's business, and in the course and scope of advertising and selling products and services.
21. HG committed copyright infringement of the Work as evidenced by the documents attached hereto as **Exhibit 2**.
22. Wild notified HG of the allegations set forth herein on March 1, 2023, and May 5, 2023. To date, Parties have failed to resolve the case.

COUNT I
COPYRIGHT INFRINGEMENT

23. Davis incorporates the allegations of paragraphs 1 through 22 of this Complaint as if fully set forth herein.
24. Davis owns a valid copyright in the Work.
25. Davis registered the Work with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

26. HG copied, displayed, and distributed the Work without Davis's authorization in violation of 17 U.S.C. § 501.

27. HG performed the acts alleged in the course and scope of its business activities.

28. HG's acts were willful.

29. Davis has been damaged.

30. The harm caused to Davis has been irreparable.

WHEREFORE, Plaintiff Harold Davis prays for judgment against Defendant Hirt's LLC dba Hirt's Gardens, that:

a. HG and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. HG be required to pay Plaintiff his actual damages and HG's profits attributable to the infringement, or, at Plaintiff's election, statutory damages, as provided in 17 U.S.C. § 504;

c. Plaintiff be awarded his attorneys' fees and costs of suit under the applicable statutes sued upon;

d. Plaintiff be awarded pre- and post-judgment interest; and

e. Plaintiff be awarded such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury of all issues so triable.

DATED: February 29, 2024

Respectfully submitted,

/s/Joel B. Rothman

JOEL B. ROTHMAN

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